

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
Marshall Johnson
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of Northern States
Power Company d/b/a Xcel Energy and
Dairyland Power Cooperative for a Certificate
of Need for a 115/161 kV Transmission Line
from Taylors Falls to the Chisago County
Substation

ISSUE DATE: May 1, 2007

DOCKET NO. E-002/TL-06-1677

ORDER DENYING MOTION TO EXTEND
TIME FRAME OF ADVISORY TASK
FORCE AND REQUIRING
COLLABORATION

PROCEDURAL HISTORY

On February 12, 2007, the Commission issued three orders initiating proceedings regarding the Taylors Falls to Chisago transmission project.¹ In its Order Accepting Route Permit Application as Complete, Authorizing Selection of Public Advisor, and Combining Environmental Review and Public Hearing with Certificate of Need Application, the Commission found the application for a route permit under the alternative review process to be complete, authorized joint public hearings with the certificate of need docket, and combined the environmental review proceedings for both the need and routing dockets.

On March 12, 2007, the Department of Commerce (the Department), filed a letter with the Commission related to the Commission's directive in this docket to establish an advisory task force. The Department stated that due to the lack of local governmental interest in participation on the task force,² it was unable to meet the statutory requirement for formal task force representation under Minn. Stat. § 216E.08, subp. 1. The Department also indicated what actions it would take to gather input on an informal basis.

On March 23, 2007, the City of Lindstrom filed a motion with the Administrative Law Judge to extend the time frame of the advisory task force or, in the alternative, to certify the motion to the Commission.

¹ See Notice and Order for Hearing, Docket No. E-002/CN-04-1176; E-002/TL-06-1677; Order Accepting Certificate of Need Application as Substantially Complete Pending Submission of Additional Data, Docket No. E-002/CN-04-1176; Order Accepting Route Permit Application as Complete, Authorizing Selection of Public Advisor, and Combining Environmental Review and Public Hearing with Certificate of Need Application, Docket No. E-002/TL-06-1677.

² The Department received only one application from a local government to participate on the task force, whereas it mailed notice to nine affected local governments.

On April 6, 2007, the Department filed its response to the City of Lindstrom's motion, recommending that the Administrative Law Judge should certify the issue to the Commission.

On April 9, 2007, the City of Lindstrom filed a petition for a contested case on the route permit docket under Minn. Rules 4400.1800, requesting the Commission to clarify the intent of its February 12 Order as to the route permit.

On April 9, 2007, the Administrative Law Judge granted the alternative relief requested by the City of Lindstrom in its March 23 motion, and filed an Order Certifying the Motion to Commission. The Administrative Law Judge made no recommendation concerning the disposition of the motion.

On April 9, 2007, an informal advisory task force facilitated by Department staff submitted a report recommending certain route alternatives to be examined in the environmental assessment to be prepared on the project.

On April 19, 2007, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Motion for Extension of Advisory Task Force

The City of Lindstrom petitioned for an extension to the time frame of the advisory task force, arguing that the schedule developed by the Department has thwarted meaningful public participation.

Following the Commission's February 12 Order, the Department developed a proposed structure and charge for the advisory task force, which it sent to local government officials. The Department made copies of a description of the advisory task force and a candidate application form available at the public meeting held in Lindstrom, on February 27, 2007, attended by approximately sixty people. In addition, the Department posted a notice and description of the task force and a candidate application form on the Chisago Transmission Project docket page on the Commission Energy Facilities Permitting web site and on the front page of that web site.

The Department received candidate applications from five citizens representing either themselves or various interest groups, but received only one application from an affected local government (of the nine noticed in its mailing).

Minn. Stat. § 216E.08, subd. 1 provides:

Task forces appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the commission, but at least one representative from each of the following: Regional development commissions, counties and municipal corporations and one town board member from each county in which a site or route is proposed to be located.

To comply with Minnesota Statute 216E.08, subd 1, at least seven of the local governments who received notice would be required to be represented on the advisory task force.

The Commission declines to extend the time frame of the advisory task force. While the time frame for participation in task force activities established by the Department was stringent due to the six month time line established under the alternative review process, the Commission declines to speculate as to whether greater local government participation would have resulted from additional time.

Moreover, the Commission believes that the Department has worked diligently to fulfill the intent of the Commission's February 12, 2007 Order, first by its attempt to establish the formal advisory task force and, second, by thereafter utilizing an informal process to gather input from local residents and officials with respect to alternatives to the proposed project. The informal advisory task force report provides a thorough discussion and recommendation of alternative routes and conditions that could be considered.

II. Petition for a Contested Case Proceeding/Draft Route Permit

The City of Lindstrom also petitioned that the routing docket be "expressly sent" to the Office of Administrative Hearings for a contested case under Minn. Rules, Part 4400.1800. The City acknowledged that the Commission's orders of February 12 are silent as to the referral of the routing docket for contested case procedures, while specific as to the referral of the certificate of need docket.

Minn. Rules, Part 4400.1800, requiring a contested case hearing in cases involving an environmental impact statement, does not apply to the alternative permitting review process under which this project was undertaken. High voltage transmission lines between 100 and 200 kilovolts – such as the Chisago project -- are eligible for alternative review pursuant to Minn. Rules, Parts 4400.2000 to 4400.2950. For eligible projects, an applicant can elect under which process of review to file. Xcel selected the alternative review process for this project, which was ordered and confirmed by the Commission's February 12, 2007 Order.

At the hearing on April 19, 2007, Xcel distributed a chart it had prepared indicating points at which it believed further opportunities exist for public participation and input into the routing process utilizing the alternative permitting process. For example, Xcel cited Minn. Rules, Chapter 1405³ as providing a helpful analogy as to how increased citizen participation might be accomplished. The Company indicated its willingness to work with the Department and the City of Lindstrom to explore the City's concerns in detail, to ensure that those concerns are memorialized in the routing process record, and to ensure their adequate consideration throughout the process.

The Commission concurs that the informality and increased flexibility of the alternative review process under Minn. Rules Part 4400.2850 appears to hold as much potential for citizen participation as that of the more formal contested case procedures and provides benefits not present in a formal contested case.

The Commission therefore encourages and directs the parties to work together to refine and/or develop specific procedures by which the City and others have the opportunity to make their case effectively. The parties are then encouraged to bring any agreed upon procedures to the Administrative Law Judge for his consideration and utilization in this docket.

³ Minn. Rules, Chapter 1405 encapsulates the procedures to be utilized for the siting of large electric power generating plants and routing of high voltage transmission lines.

In addition, the Commission encourages the parties to include in their discussions the various topics relating to the route permit document, i.e., whether or what to do with the route permit; where the line will go; and what conditions have been placed on it during construction, operation, and maintenance. Given the high importance of the route permit document to the review process, and in an effort to further enhance public participation in the route permit process, the Commission requests that the Department provide a draft route permit at the time it releases the environmental assessment.

ORDER

1. The Commission denies the City of Lindstrom's motion to extend the time frame of the advisory task force.
2. The Commission directs the parties to work together in an attempt to develop specific procedures by which to encourage and allow greater participation in the alternative review process to be utilized in this docket.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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